IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5877 OF 2005

1. Arun Shripati Bhalerao
2. Amol Arun Bhalerao. ... Applicants.

Versus.

The State of Mahrasthra. ... Respondent.

Shri Abhaykumar Apte for the Applicants.

Shri A.S.Gadkari, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 3rd October, 2005.

P.C.:

1. Heard the learned Advocate for the Applicants and the learned A.P.P. for the State.

2. the Applicants are apprehending arrest in connection with offence registered under section 341, 384, 353, 352, 506(2) read with section 34 of the Indian Penal Code. Initially an application for anticipatory bail was made by the Applicants before the Sessions Court. The ad-interim relief was granted in favour of the Applicants. The said application came to be rejected on the ground that the Applicants remained absent. The order of rejection was passed on 28th June 2005. The Applicants filed Criminal Application No.4873 of 2005 for anticipatory bail in this Court. By order dated 2nd August 2005, the said application was disposed

of. This Court set aside the order passed by the Sessions Court on 28th June 2005 and directed that the application made by the Applicants should be heard afresh. By the said order, the Applicants were directed to remain present in the Sessions Court on Monday 8th August 2005 at 11.00 a.m. This Court also directed that if the Applicants did not remain present on the next date i.e. 8th August 2005, the learned Additional Sessions Judge will be free to dismiss the application only on the ground of the absence of the Applicants.

3. Accordingly the Applicants remained present before the learned Additional Sessions Judge on 8th August 2005 along with a copy of the order passed by this Court. The learned Additional Sessions Judge issued notice to the State on the said application which was made returnable on 9th August 2005. On 9th August 2005, the Advocate appearing for the Applicants filed a pursis stating therein that the Applicants instructed him on that day not to conduct the said case because the Applicants had filed an application before the learned District Judge for transfer of the case. On the said purshis, the learned 3rd Additional Sessions Judge, Pune, passed an order recording that when the Application was called out at 5.00 p.m. none was present for the Applicants. The learned Judge passed a separate order on the main application for anticipatory bail recording that both the Applicants were absent

throughout the day and therefore, the Application should be kept on 10th August 2005. It appears that on 10th August 2005 none appeared for the Applicants. Even the Applicants were absent. After recording the above facts the learned 3rd Additional Sessions Judge rejected the application for anticipatory bail on merits.

4. The learned Advocate for the Applicants submitted that the Applicants were present throughout the day in the Court of the learned Additional Sessions Judge on 9th August 2005 along with their Advocate till 5.30 p.m. It is asserted in the application that till 5.30 p.m. on that day, the 3rd Additional Sessions Judge neither heard the application nor passed any order nor any further date of hearing was given. The learned Advocate for the Applicants relied upon a copy of the application dated 8th August 2005 submitted to the learned District and Sessions Judge, Pune as well as a copy of the letter dated 11th August 2005 sent by the Applicants to the learned District and Sessions Judge, Pune. He submitted that the Applicants were not made aware that the Application was fixed on 10th August 2005 and that is the reason why the Applicants were absent. The learned Advocate submitted that the entire prosecution case is false. He submitted that on the basis of the complaint made by the Applicants, enquiry is being initiated against the first informant as regards the illegalities and irregularities committed by

him during the course of recruitment of staff in employment of the Jail. He submitted that the F.I.R. was filed only because the first informant entertained a grudge against the Applicants. The learned A.P.P. has placed on record for my perusal papers pertaining to the investigation containing statements of various witnesses.

5. I have considered the submissions. The case of the prosecution is that on 10th June 2005 the first informant who is the Deputy Inspector General of Prisons visited the Training Centre at Yerawada Prison for inspection. While he was sitting in his official car, one Maruti esteem car was brought in front of his official car. The allegation is that the Applicants were in the said esteem car. The allegation is that the Applicant No.1 abused the first informant. It is stated that the Applicant No.1 asked the first informant why he had not recruited the son of one Bhimsen Jadhav. The Applicant No.1 threatened to kill the first informant in case he fails to recruit Bhimsen Jadhav's son. The case is that the Applicant No.1 demanded a sum of Rs.50,000/- and stated that if the said demand was not met, he will expose all the allegations against the first informant.

6. A reference will have to be made to the Application dated 8th August 2005 made by the Applicants addressed to the learned District Judge, Pune. The only

ground mentioned for transfer in the said Application is that after reading the order passed by this Court in earlier Application, the learned Additional Sessions Judge expressed annoyance. It is stated in the Application that the learned 3rd Additional Sessions Judge told the Advocate appearing for the Applicants that the Application should have been moved two or three days immediately after the order dated 2nd August 2005 was passed by this Court. Only on the basis of the alleged annoyance expressed by the learned Judge, a prayer was made for transfer. It is pertinent to note that the Applicants did not make any regular application before the Sessions Court for transfer by invoking the provisions of the Code of Criminal Procedure, 1973. The application was made in the form of a letter. The Applicants did not apply for any interim relief before the learned District Judge. It is pertinent to note that the Applicants did not apply for adjournment before the learned 3rd Addl.Sessions Judge. In fact the Applicants directed their Advocate to file a no instruction pursis stating that the Applicants did not desire to conduct the case on the ground that transfer application was filed. On the said purshis, the learned Addl.Sessions Judge has passed an order at 5.00 p.m. recording that none was present when the Application for anticipatory bail was called out. The learned Addl.Sessions Judge passed a separate order on the application for anticipatory bail on the same day. The

learned Addl.Sessions Judge would have been justified in dismissing the application on the same day. However, by way of indulgence, he adjourned the application to 10th August 2005.

7. It is pertinent to note that in this Application for anticipatory bail, a specific averment has been made in paragraph 7 that the Applicants and their Advocate were present in the Court during the entire day upto 5.30 p.m. on 9th August 2005. On 16th September 2005, time was sought by the Advocate for the Applicants to file an affidavit of the concerned Advocate who appeared for the Applicants before the Sessions Court. Accordingly time was granted. Till today the affidavit of the concerned Advocate has not been filed for substantiating the contention raised in the said application. It is pertinent to note that on 11th August 2005 the Applicants made an application before the learned District Judge. In the said application one of the grievances made is that till 5.00 p.m. on 9th August 2005 the Applicants were not heard by the learned Additional Sessions Judge. In the said application, it is also stated that the learned 3rd Additional Sessions Judge had kept the said application on 10th August 2005. It is also stated that on instructions of the Applicants the Advocate for the Applicants filed no instruction pursis on 9th August 2005. It is difficult to understand as to how the Applicants made a grievance in

the letter dated 11th August 2005 that the learned 3rd Addl.Sessions Judge did not give hearing to the Applicants on 9th August 2005. A perusal of the application dated 8th August 2005 made by the Applicants to the learned Sessions Judge, Pune shows that there is absolutely no ground for seeking transfer. Apart from that, if the Applicants were really interested in prosecuting the application for transfer, they ought to have applied for an adjournment before the learned 3rd Addl.Sessions Judge. However, the Advocate for the Applicants was instructed to file a no instruction pursis. The Applicants have not produced the affidavit of their Advocate appearing before the Sessions Court though time was granted for that purpose. In the absence of such an affidavit I will have to go by the record of the Sessions Court which shows that at 5.00 p.m. on 9th August 2005 the application for anticipatory bail was called out and the Applicants were absent. As stated earlier, the learned Judge took a lenient view of the matter and adjourned the application to next day. It is impossible to accept the bald statement of the Applicants that on 9th August 2005 next date was not given. Considering the allegations made by the Applicants against the learned 3rd Addl.Sessions Judge in the applications dated 8th August 2005 and 11th August 2005, it appears that attempt is being made by the Applicants to pollute the process of justice which itself is a sufficient ground to reject the prayer for

bail.

8. Apart from the aforesaid aspect, it must be borne in mind that the gravity of allegations and need for custodial interrogation are the only factors required to be considered while deciding an application for anticipatory bail. The allegations against the Applicants are of grave and serious nature. A perusal of the papers relating to the investigation shows that the statements of some of the witnesses have been recorded which clearly implicate the Applicants. It cannot therefore be said that the custodial interrogation of the Applicants is not required.

9. At this stage a reference will have to be made to the affidavit of the Applicant No.1 which is tendered today. The said affidavit has been sworn on 25th September 2005. In the said affidavit it is reiterated that on 9th August 2005 the Applicants and their Advocate were present in the Court to see and observe what order the learned Addl.Sessions Judge passes on no instruction pursis. In the application for anticipatory bail and in particular paragraphs 7 to 9, it has been stated that the Applicants and their Advocate were present in Court for the entire day upto 5.30 in the evening. In the affidavit dated 25th September 2005, the Applicant No.1 has stated that his Advocate was not present for the entire day but had to leave the Court

for sometime for attending to other Courts.

10. No case is made out for grant of anticipatory bail. The Application is rejected.

11. At this stage the learned Advocate the Applicants seeks two weeks time to surrender. The said prayer is opposed by the learned A.P.P. Considering the conduct of the Applicants, the said prayer cannot be granted and is rejected.

Judge.